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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re) Case No. 19-30088 (DM)
)
PG&E CORPORATION,) Chapter 11
)
and) (Lead Case–Jointly Administered)
)
PACIFIC GAS AND ELECTRIC)
COMPANY)

Debtors

Affects:

- ☐ PG&E Corporation
☐ Pacific Gas & Electric Company
☒ Both Debtors

* All papers shall be filed in the Lead
Case, No. 19-30088 (DM).

**OBJECTION BY THE SINGLETON LAW
FIRM FIRE VICTIM CLAIMANTS TO
THE MOTION FOR THE APPOINTMENT
OF AN EXAMINER PURSUANT TO
SECTION 1104(c) OF THE BANKRUPTCY
CODE AND BANKRUPTCY RULE 2007.1;
AND
JOINDER TO: (1) THE OPPOSITION BY
WATTS GUERRA LLP FOR
APPOINTMENT OF AN EXAMINER OF
VOTING IRREGULARITIES PURSUANT
TO SECTION 1104(C); AND (2)
SUPPLEMENTAL OPPOSITION BY
WATTS GUERRA LLP TO
APPOINTMENT OF AN EXAMINER OF
VOTING IRREGULARITIES PURSUANT
TO SECTION 1104(C)**

[Docket No. 7568, 7436, and 7706]

Hearing Date:

Date: June 4, 2020

Time: 10:00 a.m. (Pacific)

Place: By Video

United States Bankruptcy Court

Courtroom 17, 16th Floor

San Francisco, CA 94102

Singleton Law Firm Fire Victim Claimants (“SLF Fire Victim Claimants”) hereby file this Objection to the *Motion for Appointment of an Examiner of Voting Procedural Irregularities Pursuant to Section 1104(c) of the Bankruptcy Code and the Bankruptcy Rule 2007.1* [**Docket No. 7568**] filed on May 25, 2020, by Karen Gowins ("Motion") and join the *Opposition To Motion for the Appointment of an Examiner of Voting Irregularities Pursuant to 11 U.S.C. §1104(c) and Bankruptcy Rule 2007.1* [**Docket No. 7436**] filed on May 20, 2020, by Watts Guerra LLP and join the *Supplemental Opposition To Motion for the Appointment of an Examiner of Voting Irregularities Pursuant to 11 U.S.C. §1104(c) and Bankruptcy Rule 2007.1* [**Docket No. 7706**] filed on June 1, 2020, by Watts Guerra LLP.

The Motion Should Be Denied for Untimeliness

Section¹ 1104(c) provides:

(c) If the court does not order the appointment of a trustee under this section, then at any time before the confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of an examiner to conduct such an investigation of the debtor ***as is appropriate***, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor of or by current or former management of the debtor, if—

(1) such appointment is in the interests of creditors, any equity security holders, and other interests of the estate; or

(2) the debtor’s fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed \$5,000,000.¹

¹ Separately, it does not appear that Movant has met her evidentiary burden of demonstrating to the court by specific evidence that ‘qualified debt’ exists justifying relief under subsection (c)(2). To that end, the Motion should be denied without prejudice so Movant can refile and meet her evidentiary burden, that the Debtors’ fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed \$5,000,000 and other evidentiary burdens set forth in Section 1104(c).

1 11 U.S.C. §1104(c). Emphasis added.

2
3 Notwithstanding the mandatory language of Section 1104(c), some courts have denied the
4 appointment of an examiner even when the debtor's fixed, liquidated, unsecured debts, other than
5 debts for goods, services or taxes, or debts owing to an insider, exceed \$5 million. These courts
6 typically find that such an appointment would constitute an unnecessary expense or is inappropriate
7 under a totality of the circumstances. *In re Rutenberg*, 158 B.R. 230, 233 (Bankr. M.D. Fla 1993); *In*
8 *re Shelter Res. Corp.*, 35 B.R. 304, 305 (Bankr. N.D. Ohio 1983) ("It is the opinion of this Court,
9 therefore, that confronted with the facts and circumstances that presently exist in this particular case,
10 to slavishly and blindly follow the so-called mandatory dictates of Section 1104(b)(2) is needless,
11 costly and non-productive and would impose a grave injustice on all parties herein.") Further,
12 circumstances to consider include whether there is a committee already constituted under Section
13 1103. *In re Shelter Res. Corp.*, 35 B.R. 304, 305 (Bankr. N.D. Ohio 1983). This is because courts
14 believe that official committees can investigate and adequately address issues about a case or the
15 debtor's operations that may be raised in such situations. This case has multiple official committees,
16 including the Official Tort Claimants Committee. To the extent an examiner was needed, surely the
17 TCC or Office of the United States Trustee would have requested one. No such request was made.

18 Similarly, a court may find that appointment of an examiner will interfere with the expeditious
19 resolution of the case and deny an examiner motion based on laches. For example, ***if a request for the***
20 ***mandatory appointment of an examiner is made on the eve of a confirmation hearing***, a court
21 might deny the appointment of an examiner if persuaded that delay of confirmation is unwarranted.
22 *See, In re Schepps Food Stores, Inc.*, 148 B.R. 27, 30 (S.D. Tex. 1992) (concluding that appointment
23 is mandatory, but finding that *creditor waived right to appointment of examiner by failing to make*
24 *request until eve of confirmation hearing*); *In re Bradlees Stores, Inc.*, 209 B.R. 36, 38 (Bankr.
25 S.D.N.Y. 1997) (concluding that creditors waived right to appointment of examiner to investigate
26 claims arising from leveraged buyout by failing to make request until approximately two years after
27 cases were filed and eight months after issuance of report on same matter by debtors' professionals
28 following a thirteen-month investigation); *but see In re Revco, D.S., Inc.*, 898 F.2d 498 (6th Cir.

1 1990). It is not in the interests of creditors to have an examiner appointed at the twelfth hour when the
2 Plan has overwhelmingly been voted in favor of and is on the precipice of confirmation. Lastly, if the
3 court confirms the Plan then the relief sought in the motion becomes moot, as Section 1104 may only
4 be used prior to confirmation. *See*, 11 U.S.C. §1104(c) (“If the court does not order the appointment of
5 a trustee under this section, then ***at any time before the confirmation of a plan...***”). Emphasis added.

6 What is clear, is the mandatory nature of Section 1104 was not intended and should not be
7 relied on to permit blatant interference with the chapter 11 case or the plan confirmation process. *In*
8 *re Residential Capital, LLC*, 474 B.R. 112, 120–21 (Bankr. S.D.N.Y. 2012); *see also In re Dewey &*
9 *LeBoeuf LLP*, 68 C.B.C.2d 660, 478 B.R. 627, 639 (Bankr. S.D.N.Y. 2012) (reiterating position
10 previously espoused by same judge in *In re Residential Capital*).

11 Because both (a) failing to make a timely request and (b) filing an examiner motion as a
12 litigation delay tactic each provide independent grounds for denying the request, SLF respectfully
13 requests the Motion be denied. Alternatively, if the court elects to appoint an examiner the scope
14 should be limited to whether the Debtors and/or their agents did anything improper in mailing the
15 Plan solicitation materials. To that end, SLF believes that Judge Randall Newsom would be an
16 appropriate candidate for examiner.

17 Dated: June 2, 2020

MARSHACK HAYS LLP

18 By: /s Richard A. Marshack

19 Richard A. Marshack
Laila Masud

20 Dated: June 2, 2020

SINGLETON LAW FIRM, APC

21 By: /s Gerald Singleton

22 Gerald Singleton

23 Attorneys for the SLF Fire Victim Claimants
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